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C O N F I D E N T I A L SECTION 01 OF 04 BAGHDAD 003157

SIPDIS

NSC FOR PHEE, VROOMAN

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SUBJECT: DELAYED GRATIFICATION: ELECTION LAW ADOPTED

Classified By: Ambassador Christopher R. Hill. Reasons 1.4 (b) and (d)

¶1. (C) SUMMARY: Following strong Embassy and UNAMI engagement with key Kurdish leaders in Baghdad, crucial calls by POTUS and VPOTUS to Kurdistan Regional Government (KRG) President Masoud Barzani broke the logjam to permit consensus approval of a UNAMI election law compromise proposal late December 6. Overruling the objections of the head of the Iraqi Kurdistan Parliament (IKP), Barzani instructed the Kurdish bloc to endorse the deal, paving the way for other major Iraqi parties to achieve consensus in the Council of Representatives (COR). The vote for the agreement came just minutes before midnight; VP al-Hashimi had said he would veto the proposal unless a consensus agreement was reached by then. The deal increases the number of seats from 275 to 325 and specifies the allocation of parliamentary seats among Iraq's governorates. It does not specify an election date, which will be determined in a Presidency Council statement. UNAMI believes February 27 is feasible, and we and UNAMI are engaging Presidency Council members and others to advocate for that. The calls by POTUS and VPOTUS to Barzani were critical in prompting Barzani to actively instruct Kirkuki and the Kurdish bloc to accept the UNAMI proposal. Hampered by concerns about the reliability of U.S. assurances, threatened by the deteriorating KDP-PUK bipolar order and a rising Goran Party, and allegedly concerned about potential Sunni/Shia political treachery, Kurdish representatives in Baghdad likely would have rejected the UNAMI deal had they been left to their own devices. END SUMMARY.

KURDS CLEAVE TO A HARD LINE

¶2. (C) In a pair of meetings late on December 5 and early on December 6, the Ambassador and UNAMI SRSG Ad Melkert urged a delegation of mostly Kurdistan Democratic Party (KDP) and Goran members of the Iraqi Kurdistan Parliament (IKP), led by Speaker Kamal Kirkuki, to accept a UNAMI election law compromise deal agreed on by Sunni, Shia, and Kurdish representatives the previous day. (Note: Following hours of briefings over the local weekend by electoral experts from UNAMI and the Independent High Electoral Commission (IHEC), Kurdish negotiators Fuad Masoum and Friad Rwanduzi, both PUK members, had recommended to KRG President Barzani December 5 that he accept the deal, which gives Kurds 43 parliamentary seats. Kirkuki had not yet arrived from Erbil and believed he was empowered by Barzani to approve or reject the proposal. End Note.) The Ambassador and Melkert explained why the deal was in the Kurds' best interests, refuted Kirkuki's claim that KRG provinces were entitled to 48-50 (vice 43) seats and debunked his argument that the 2005 election law could be used if no consensus solution was achieved.

¶3. (C) Kirkuki argued the issue was "justice" for Kurds, not simply the number of seats. The Kurdish share of COR seats must grow proportionally with those of other governorates

(hence the claim to 50 seats). Melkert pushed back, noting that the 2005 distribution of COR seats was based on the voter registry, a practice the Supreme Court had since declared unconstitutional. UNAMI estimated the KRG would have received only 37 seats (30 provincial plus 7 compensatory) - vice 42 - in 2005 had they been allocated according to the most accurate population data then available. The Ambassador and SRSR noted the United States and UN were prepared to support a national census in 2010 to mitigate disputes over population data. Stressing that failure to hold timely elections would complicate the efforts of the U.S. and others in Iraq, including in the Kurdish region, they cautioned the Kurds against rejecting the UNAMI election law compromise. The Ambassador underscored that the KRG's autonomy depended on good political arrangements with the rest of Iraqi and on good diplomatic and security arrangements with foreign states, especially the United States. Kurdish refusal to support UNAMI's fair and reasonable proposal would undermine both of these platforms of Kurdish autonomy.

BARZANI TRIES TO PASS THE BUCK

¶4. (C) Following the meeting with Kirkuki, Kurdish MPs and IKP delegation members spent much of the afternoon debating the proposal. Fuad Masoum and Firas Riwanduzi tried to persuade Kirkuki and the KDP side of the Kurdish Alliance List bloc to accept UNAMI's proposal. They told Embassies "Erbil" (i.e., Barzani) had refused to instruct KDP members (including Kirkuki) to back UNAMI's proposal, and expressed frustration that they had been left to work things out among

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themselves in Baghdad. PolCouns stressed to Kirkuki, Masoum and Riwanduzi that the UNAMI proposal represented a fair deal and that 43 seats was the final offer. To bolster the PUK position, the Ambassador directly engaged President Talabani, who said he understood the gravity of the situation, referred to Kirkuki as a "foolish and stupid man," and promised to call Barzani immediately to urge him to accept UNAMI's proposal. DCM and PolCouns also pressed Fuad Hussein, Barzani's chief of staff, to help elicit a positive response from the KRG president.

VETO NARROWLY AVERTED

¶5. (C) Stung by criticism of his decision to veto the November 8 election law, VP al-Hashimi was keen to avoid another veto, but had publicly committed to doing so unless a consensus agreement was achieved. (Note: The deadline for a Presidency Council member veto of the November 23 law/UNAMI proposal, recently extended for two days by the Supreme Court, expired December 6. End Note.) Amid confusion about whether the deadline for veto was the COR's close of business or midnight, Hashimi sent a letter of veto to COR Speaker Samarra'i mid-afternoon. PolCouns intervened with Hashimi's aide and coordinated with DPM Rafi al-Issawi (negotiator of the election law on behalf of Hashimi and the Sunnis) and MP Hadi al-Amiri (Badr bloc leader and lead negotiator for the Shia) to urge that Hashimi not exercise his veto until all other options had been exhausted. Hashimi relented, as Embassies began a full-court press to locate the veto letter in the Presidency Council office or at the COR, where it would have become official upon processing by the Speaker's Office.

Meanwhile PolCouns went to Samarra'i's office to ask the Speaker not to process any veto until midnight, only to discover that Hashimi's lawyers were delivering the veto documents at that very moment. PolCouns joined the meeting and informed both sides that Hashimi wished to hold his veto in reserve until midnight. After a flurry of confirmatory phone calls, Hashimi's lawyers retrieved the veto letter and envelope from Samarra'i and returned to Hashimi's office.

¶6. (C) Speaker Samarraï had opened the December 6 COR session at 12:50 p.m. with 103 MPs in attendance (short of the 138 needed for a quorum); however, with no deal on which to vote, he quickly announced a recess. The COR reconvened at 4:10 p.m. with 116 MPs present, but was again recessed until 8:00 p.m. as Kurdish deliberations continued. Drawing from UNAMI drafts, Deputy Speaker Attiya prepared a draft resolution, with a chart detailing the distribution of COR seats among governorates, for a vote. Action was otherwise largely focused on internal Kurdish bloc deliberations. When the COR recessed for the second time shortly after 4:00 p.m., most MPs were skeptical that a deal could be reached.

¶7. (C) With little time left to forestall Hashimi's veto, the early evening (Baghdad time) phone calls by the POTUS and VPOTUS to Barzani were critical in prompting instructions from Erbil to Kirkuki and the Kurdish delegation in Baghdad to accept UNAMI's proposal. Melkert and PolCouns met with Kirkuki, Masoum and Rwanduzi shortly after the calls to Erbil. Stressing the unique nature of the POTUS and VPOTUS interventions, Melkert offered to issue a joint statement with Kurdish leadership highlighting that: 1) the election law compromise was valid only for 2010 national elections; 2) a national census was urgently needed and would be supported by the UN; 3) a permanent civil and voter registry system should be established with UN support, and; 4) the SRSG would be willing to visit Erbil in December to discuss Article 140 concerns with KRG parliamentarians. PolCouns stressed that if agreement on the election was reached on December 6, the White House was prepared to issue a statement reflecting: 1) U.S. support for a 2010 census; 2) respect for Iraq's constitution, including Article 140; and 3) a commitment to continue to provide active support to resolve outstanding Arab-Kurd issues. The presentations were interrupted repeatedly by increasingly urgent-sounding telephone calls from Barzani and Fuad Hussein to the Kurdish delegation.

11TH HOUR VOTE

¶8. (C) After a last effort to wheedle a few more seats out of PolCouns (who made it clear the final offer remained 43), Kirkuki ("how about 45 seats then?") finally joined Masoum and Rwanduzi in urging Kurdish bloc members to accept the deal, prompting a spirited discussion. Masoum told Melkert and PolCouns shortly after 10:00 p.m. that the delegation had

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decided to agree to the U.S. request and accept the UNAMI proposal. (Note: Rwanduzi told Emboffs that while it had all been over once Barzani called Kirkuki after the POTUS-Barzani telcon, Kirkuki had engaged in political theater to preserve the impression that he had adequately championed Kurdish interests. End note.) Rwanduzi appeared shortly thereafter on the al-Sharqiyah satellite channel to announce that an agreement had been struck after the White House offered "guarantees" to the KRG. Other television outlets ran stories heralding the electoral agreement as Speaker Samarraï and party bloc leaders worked to muster a quorum despite the late hour. A critical mass of MPs was achieved at 11:00 p.m.

A surprise rejection of the resolution by the Kurdish Islamic Union (KIU) forced a last-minute huddle on the mezzanine, where Friad Rwanduzi again argued the merits of the deal and threatened to vote without the KIU, whose members then jumped on board.

¶9. (C) After a bumpy final meeting in which UNAMI election experts explained to Sunni and Shia leaders how the two additional seats for the Kurds would be allocated, the COR was hastily convened at 11:23 p.m. Following brief discussion (with a testy Hadi al-Amiri answering a few technical questions) and two readings of the draft, the COR

voted to approve the resolution at 11:49 p.m., with 11 minutes to spare, narrowly averting another Hashimi veto. There was no vote count - Samarrai simply declared that the resolution had passed with "an obvious majority."

WHAT HAPPENS NOW?

¶10. (C) The resolution, officially referred to as a "decision," adopted by the COR clarifies discrepancies between the November 8 and November 23 election law amendments. The decision lays out the agreement of the political blocs to a specific interpretation of the November 23 amendment, which Hashimi had threatened to veto. (Note: The parties agreed to pursue a solution via a "decision," vice a new amendment, because the latter would have required three readings and a minimum of eight days, whereas a decision may be taken immediately. End note.) Since Iraq's constitution does not distinguish between "decisions" and conventional legislation, the December 6 resolution must now be forwarded to the Presidency Council, which has a ten-day window in which to ratify or veto it. (Comment: Given that it was a consensus agreement and the desire to avoid another veto, it seems unlikely that it will be vetoed. End comment.)

¶11. (C) The election law as it now stands is based on the 2005 law, with the bulk of amendments from November 8 having been ratified at midnight on November 7, when the veto window closed for the Presidency Council. The November 23 amendment, which only altered one article of the law, also officially came into force when then December 6 resolution passed. The December 6 resolution, combined with the previous amendments, increases COR seats from 275 to 325 seats (using 2005 Ministry of Trade statistics as a base and adding 2.8 percent annually). The seats are distributed according to the 2009 Ministry of Trade statistics per Article 2 of the November 8 law, which was not referenced in VP Hashimi's veto and thus remains valid. Seat distribution is as follows (Note: A seat distribution chart attached to the decision takes pressure off IHEC by clarifying the highly politicized task of allocating seats. End note.):

-- 310 of the 325 seats will be distributed directly to the governorates.

-- The remaining 15 will be allocated as compensatory seats;
Q-- The remaining 15 will be allocated as compensatory seats; eight are reserved for minorities.

-- Per the December 6 resolution, Kurds will receive 43 seats (41 in the governorates plus two from the compensatory seat tranche set aside for minorities in the KRG region).

¶12. (C) For votes from Iraqis abroad, language from the November 23 resolution remains valid: out-of-country (OCV) votes will be counted towards their governorates of origin. It is now up to IHEC to establish the mechanisms and regulations to implement OCV.

¶13. (C) The resolution does not specify an election date, which will be determined in a Presidency Council statement. UNAMI believes February 27 is feasible, and we and UNAMI are engaging Presidency Council members and others to adopt this date.

¶14. (C) COMMENT: Left to his own devices, Kirkuki would have

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rejected the UNAMI deal, thereby likely blocking a consensus deal in the COR and triggering a second Hashimi veto. In the final meeting with the SRSG and PolCouns before the vote, Kirkuki sounded a theme we have heard from a number of other Kurds over the past few months: The Kurds are deeply fearful of the effects of the U.S. military drawdown and ultimate withdrawal on their future. If the United States does not

follow through next year on pledges to help resolve Arab-Kurd issues (Article 140 and disputed internal boundaries) -- before the withdrawal of U.S. forces -- there will be no one and nothing left to ensure the protection of Kurdish equities, the Kurds tell us. The Kurds' reluctance to compromise and insistence on casting the election law debate in existential terms appear to have been informed by concern about U.S. forces' drawdown and the consequences of that for their interests. Those concerns are exacerbated by new challenges to the KDP-PUK system and the threat, particularly to the PUK, posed by the rise of the opposition Goran List. Uncertainty about the internal Kurdish political constellation, together with fears of Sunni/Shia political treachery and Erbil's ongoing ambivalence towards Baghdad are altering the political scene up north, increasingly affecting Barzani's willingness and ability to assert decisions that could expose him to political attack. END COMMENT.
HILL